

Maeder



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hawthorne Power Systems

File: B-238447

Date: May 8, 1990

Paul Brewer, for the protester.
Charles J. McManus, Esq., Office of the General Counsel,
Department of the Navy, for the agency.
Jacqueline Maeder, Esq., and John F. Mitchell, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Protest that an award was made under a request for proposals to an offeror whose proposal did not meet the specifications of the solicitation is dismissed as academic when the agency determines that the solicitation was defective and the award improper and takes the appropriate corrective action.

DECISION

Hawthorne Power Systems protests the award of a contract to United States Motors Corporation under request for proposals (RFP) No. N00604-89-R-0088, issued by the Naval Supply Center, Pearl Harbor, Hawaii, for diesel engine generators. Hawthorne contends that the engines proposed by the awardee did not meet the specifications of the solicitation and that the award of the contract should be made to the lowest priced offeror meeting the original specifications.

We dismiss the protest.

The Naval Supply Center issued the RFP on June 23, 1989, for two 600-kilowatt and two 500-kilowatt diesel engine generators, all with 4-cycle engines. Five offers were received by the July 24 closing date and all five were found technically acceptable. On January 18, 1990, the contract was awarded to the low offeror, United States Motors. On January 22, when notified orally of the award, Hawthorne informed the agency of its intent to protest and on January 30, Hawthorne filed its protest with our Office.

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In its protest, Hawthorne argued that although the solicitation called for 4-cycle, 12-cylinder engines, the awardee proposed Detroit diesel engines which are of a 2-cycle, 12-cylinder design. Hawthorne argued that the contract should be awarded to the lowest priced offeror who meets the specifications.

In its report to our Office, the Naval Supply Center explained that the requiring activity, apparently sometime after the solicitation had been issued, indicated that either a two- or a four-cycle engine would meet its requirements. However, contracting personnel inadvertently failed to amend the RFP to permit offers on two-cycle as well as on four-cycle engines. The contracting officer found all offers technically acceptable because he believed the amendment had been issued. When Hawthorne notified the contracting officer of its intent to protest, the contracting officer reviewed the file and determined that award was in fact improper because the specifications had not been amended and the awardee had offered a two-cycle engine instead of the four-cycle engine required by the RFP. Immediately after making this determination, the contracting officer suspended performance on the contract awarded to United States Motors.

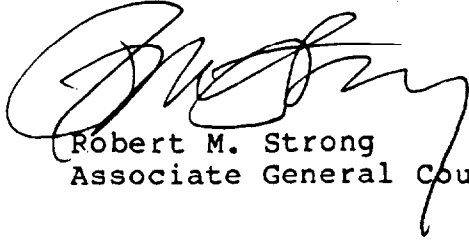
The agency then revised the specifications to reflect that either two-cycle or four-cycle engines would meet the agency's needs, and requested best and final offers (BAFO) from all the offerors on that basis. BAFOs were to be submitted by March 2 and a contract will be awarded to the technically acceptable low offeror which meets the specifications of the amended RFP.

The agency's action here--suspending performance and requesting BAFOs from all offerors based on amended specifications that meet the minimum needs of the government--is appropriate. Associated Professional Enters., Inc., B-231766, Oct. 12, 1988, 88-2 CPD ¶ 343. Since the agency has admitted error and has taken corrective action to remedy the deficiency in this procurement, no useful purpose would be served by further consideration of the protest. Maytag Aircraft Corp.--Request for Reconsideration; Claim for Protest Costs, B-237068.2, Nov. 13, 1989, 69 Comp. Gen. ___, 89-2 CPD ¶ 457.

As to Hawthorne's argument that the contract should be awarded to the lowest priced offeror conforming to the original specifications contained in the RFP, the record indicates that the original RFP does not adequately reflect the agency's needs. Generally, the determination of the government's minimum needs and the best method of

accommodating them are primarily the responsibility of contracting agencies. Consequently we will not question an agency's minimum needs unless there is a clear showing that the determination has no reasonable basis. New York Wire Co., B-235821, Sept. 19, 1989, 89-2 CPD ¶ 246. In this instance, the protester has not even argued that a two-cycle engine will not meet the Navy's needs. Therefore, we have no basis to question that determination.

The protest is dismissed.

A handwritten signature in black ink, appearing to read "R. Strong", is written over the printed name and title.

Robert M. Strong
Associate General Counsel